

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

843S0528

HOUSE TAXATION ENGROSSED NO. **SB 146** - 2/24/2011

Introduced by: Senators Peters and Hansen (Tom) and Representatives Cronin and Dennert

1 FOR AN ACT ENTITLED, An Act to require certain notice requirements for retailers that do
2 not have nexus in South Dakota which are selling tangible personal property, services, or
3 products transferred electronically for use in South Dakota.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Terms used in this Act mean:

- 6 (1) "De minimis online auction website," any online auction website that facilitates total
7 gross sales in South Dakota in the prior calendar year of less than one hundred
8 thousand dollars and reasonably expects South Dakota sales in the current calendar
9 year will be less than one hundred thousand dollars;
- 10 (2) "De minimis retailer," any noncollecting retailer that made total gross sales in South
11 Dakota in the prior calendar year of less than one hundred thousand dollars and
12 reasonably expects South Dakota sales in the current calendar year will be less than
13 one hundred thousand dollars;
- 14 (3) "Noncollecting retailer," any retailer, not currently registered to collect and remit
15 South Dakota sales and use tax, who makes sales of tangible personal property,



1 services, and products transferred electronically from a place of business outside of
2 South Dakota to be shipped to South Dakota for use, storage, or consumption and
3 who is not required to collect South Dakota sales or use taxes;

4 (4) "Online auction website," a collection of web pages on the Internet that allows any
5 person to display tangible personal property, services, or products transferred
6 electronically for sale which is purchased through a competitive process where a
7 participant places a bid with the highest bidder purchasing the property, service, or
8 product when the bidding period ends;

9 (5) "South Dakota purchaser," any purchaser that purchases tangible personal property,
10 services, or products transferred electronically to be shipped or transferred to South
11 Dakota.

12 Section 2. Pursuant to this Act, each noncollecting retailer shall give notice that South
13 Dakota use tax is due on nonexempt purchases of tangible personal property, services, or
14 products transferred electronically and shall be paid by the South Dakota purchaser. The notice
15 shall be readily visible and contain the information as follows:

16 (1) The noncollecting retailer is not required, and does not collect South Dakota sales or
17 use tax;

18 (2) The purchase is subject to state use tax unless it is specifically exempt from taxation;

19 (3) The purchase is not exempt merely because the purchase is made over the Internet,
20 by catalog, or by other remote means;

21 (4) The state requires each South Dakota purchaser to report any purchase that was not
22 taxed and pay tax on the purchase. The tax may be reported and paid on the South
23 Dakota use tax form; and

24 (5) The use tax form and corresponding instructions are available on the South Dakota

1 Department of Revenue and Regulation website.

2 Section 3. The notice required by section 2 of this Act on a website shall occur on a page
3 necessary to facilitate the applicable transaction. The notice shall be sufficient if the
4 noncollecting retailer provides a prominent linking notice that reads as follows: "See important
5 South Dakota sales and use tax information regarding the tax you may owe directly to the state
6 of South Dakota." The prominent linking notice shall direct the purchaser to the principal notice
7 information required by section 2 of this Act.

8 The notice required by section 2 of this Act in a catalog shall be part of the order form. The
9 notice shall be sufficient if the noncollecting retailer provides a prominent reference to a
10 supplemental page that reads as follows: "See important South Dakota sales and use tax
11 information regarding the tax you may owe directly to the state of South Dakota on page ____."
12 The notice on the order form shall direct the purchaser to the page that includes the principal
13 notice required by section 2 of this Act.

14 Section 4. For any internet purchase made pursuant to this Act, the invoice notice shall occur
15 on the electronic order confirmation. The notice shall be sufficient if the noncollecting retailer
16 provides a prominent linking notice that reads as follows: "See important South Dakota sales
17 and use tax information regarding the tax you may owe directly to the state of South Dakota."
18 The invoice notice link shall direct the purchaser to the principal notice required by section 2
19 of this Act. If the noncollecting retailer does not issue an electronic order confirmation, the
20 complete notice shall be placed on the purchase order, bill, receipt, sales slip, order form, or
21 packing statement.

22 For any catalog or phone purchase made pursuant to this Act, the complete notice shall be
23 placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

24 Section 5. For any internet purchase made pursuant to this Act, notice on the check-out page

1 fulfills both the website and invoice notice requirements simultaneously, the notice shall be
2 sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows:
3 "See important South Dakota sales and use tax information regarding the tax you may owe
4 directly to the state of South Dakota." The check-out page notice link shall direct the purchaser
5 to the principal notice required by section 2 of this Act.

6 If a retailer is required to provide a similar notice for another state in addition to South
7 Dakota, the retailer may provide a consolidated notice so long as the notice includes the
8 information contained in section 2 of this Act, specifically references South Dakota, and meets
9 the placement requirements of this section.

10 Section 6. A noncollecting retailer may not state or display or imply that no tax is due on any
11 South Dakota purchase unless the display is accompanied by the notice required by section 2
12 of this Act each time the display appears. If a summary of the transaction includes a line
13 designated "sales tax" and shows the amount of sales tax as zero, this constitutes a display
14 implying that no tax is due on the purchase. This display shall be accompanied by the notice
15 required by section 2 of this Act each time it appears.

16 Notwithstanding the limitation in this section, if a noncollecting retailer knows that a
17 purchase is exempt from South Dakota tax pursuant to South Dakota law, the noncollecting
18 retailer may display or indicate that no sales or use tax is due even if the display is not
19 accompanied by the notice required by section 2 of the Act.

20 Section 7. With the exception of notification on an invoice, the provisions of this Act apply
21 to online auction websites.

22 Section 8. A de minimis retailer and a de minimis online auction website are exempt from
23 the notice requirements provided by this Act.

24 Section 9. No criminal penalty or civil liability may be applied or assessed for failure to

1 comply with the provisions of this Act.